

the provisions of section D of Annex 1603 of NAFTA.

§655.301 Overview of process.

This section provides a context for the attestation process, to facilitate understanding by health care facilities that may seek nonimmigrant nurses under H-1A visas.

(a) *Federal agencies' responsibilities.* The United States Department of Labor (DOL), Department of Justice, and Department of State are involved in the H-1A visa process. Within DOL, the Employment and Training Administration (ETA) and the Employment Standards Administration (ESA) have responsibility for different aspects of the process.

(b) *Health care facility's attestation responsibilities.* Each health care facility seeking one or more H-1A nurses shall, as the first step, submit an attestation on *Form ETA 9029*, as described in §655.310 of this part, to the designated regional office of the Employment and Training Administration (ETA) of DOL. If the attestation is found to meet the requirements set at §655.310 (a) through (k) of this part, ETA shall accept the attestation for filing, shall return the cover form of the accepted attestation to the health care facility, and shall notify the Immigration and Naturalization Service (INS) of the Department of Justice of the filing. As discussed in §655.310 of this part, if the facility proposes to utilize alternative methods to comply with Attestation Elements I and/or IV, or asserts that taking a second timely and significant step under Element IV would be unreasonable, or claims a bona fide medical emergency exemption from Element IV as a worksite using one or more H-1A nurses through a nursing contractor only, additional supporting information and ETA review shall be required.

(c) *Visa petitions.* Upon ETA's acceptance of the filing, the health care facility may then file with INS H-1A visa petitions for the admission of H-1A nurses, or to extend the stay of alien nurses currently working at the facility. The facility shall attach a copy of the accepted attestation form (*Form ETA 9029*) to the visa petition filed with INS. At the same time that the facility files a visa petition with INS,

it shall also send a copy of the visa petition with INS, it shall also send a copy of the visa petition to the Chief, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, 200 Constitution Avenue, NW., room N-4456, Washington, DC 20210.

(d) *Visa issuance.* INS assures that the nonimmigrants possess the required qualifications and credentials to be employed as nurses. See 8 U.S.C. 1182(m)(1)). The Department of State is responsible for issuing the visa.

(e) *Board of Alien Labor Certification Appeals (BALCA) review of attestations accepted and not accepted for filing.* The decision whether or not to accept for filing an attestation which ETA has reviewed, that is: an attestation where the facility is attesting to alternative methods of compliance with Element I and/or Element IV; an attestation where the facility is claiming that taking a second timely and significant step would not be reasonable; and/or an attestation where a facility that is not an employer of H-1A nurses is claiming a bona fide medical emergency as the basis for requesting a waiver of Element IV; may be appealed by any interested party to the BALCA.

(f) *Complaints.* Complaints concerning misrepresentation in the attestation or failure of the health care facility to carry out the terms of the attestation may be filed with the Wage and Hour Division (Division), Employment Standards Administration (ESA) of DOL, according to the procedures set forth in subpart E of this part. Complaints of "misrepresentation" may include assertions that a facility's attestations of compliance failed to meet the regulatory standards for attestation elements under which the attestation was accepted by ETA for filing without ETA review. The Division shall then investigate, and, where appropriate, after an opportunity for a hearing, assess sanctions and penalties. Subpart E of this part also provides that interested parties may obtain an administrative law judge hearing and may seek the Secretary's review of the administrative law judge's decision.